IN THE HIGH COURT OF JUDICATURE AT BOMBAY

T AND I JURISDICTION

NOTICE OF MOTION NO. 3409 OF 2003
IN
MISC. PETITIONNO. 39 OF 2003
IN
PETITION NO. 1015 OF 1997

Mr. Dougal M. Pereira .Petitioner
vs.
Mrs. Pamela Gonsalves and Ors. .Respondents

Mr. Sahu D. i/b. S.K. Srivastav for respondent no.3.

Denzil D'mello for the petitioner.

CORAM: S.U. KAMDAR, J.

DATE : 8TH JULY, 2005.

P.C. :

1. The present notice of motion has been taken out for appointment of Court Receiver, inrespect of an estate of the deceased being Plot of Land bearing C.T.S. no. C/835-B admeasuring 1040 sq. yds situated at 3-C Pail Mala Road, Bandra(W), Mumbai-50 and injunction inrespect of the said

property. The present motion is taken out in a Misc. Petition No. 39 of 2003 which has been filed by him for revocation and/or the annulment of the letter of administration granted in favour of the respondent no.1 on 4.4.1998. Prayer (b) of the said petition is to remove him as an administrator and appoint the petitioner in his place. Learned counsel appearing for the petitioner has contended that the present motion has been taken out because during the lifetime of the deceased, the deceased entered into an agreement for development of the said property which is situated at Pali Hill, Bandra (W). On the death of the said deceased the said agreement for development has been purpotedly terminated by the respondent no.1. acting in his capacity as an administrator. It is now apprehended that the respondent no.1 may settle with the builder in respect of the said property.

3. Misc. Petition no. 39 of 2003 is filed for the removal of the administrator. the only ground for removal of the administrator is that the

administrator has not furnished the account within a period of six months as contemplated under the Hindu Succession Act. Secondly on the ground that the material facts is suppressed by the respondent no.1 of the receipt of Rs.1,20,00,000/-. Admittedly the petitioner is a resident of Australia and is not residing in Mumbai. Secondly there is no dispute as to one-fifth share in the said property and this court has so declared while granting the letter of administration.

3. It is settled law that the present proceedings cannot e decide an inter-se dispute as to the tile of the parties. This motion has been purpotedly taken out in respect of a disputes of the said properties at Bandra with the builder. It is open for the petitioner to approach civil court for protection of his one-fifth share in the said property and or protecting the property from the transfer which is apprehended by him. By the present notice of motion by appointing the Receiver of the property the applicant cannot settle his disputes with the builder and other

co-sharer in respect of the said properties. Admittedly other co-sharer re also having one fourth interest in the properties. The letter of administration having been issued they are entitled to their share. In my opinion by this method of filing a revocation petiton the petitioner cannot defeat their substatial rights in the property. Admittedly the letter of administration has been issued after obtaining his consent and therefore I do not find any substance in the present notice of motion. I am of the opinion that the petitioners contention that there is suppression of the material facts is without any merits because the petitioner was aware of the said fact when he granted his consent to the said petition and on his consent the said letter of administration has been issued. In view thereof motion dismissed. Learned counsel appearing for the petitioner seeks continue of an ad-interim order dated 9.10.2003. The said order dated 9.10.2003 is continued till 5.8.2005.

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